

MINUTES  
FOR THE MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES

DATE: FRIDAY, NOVEMBER 09, 2018  
TIME: 9:15 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAI'I 96813

Meeting called to order at 9:16 a.m. by Chair Case. Member Gon read the standard contested case statement. Chair Case noted that we are engaged in agenda management and most of the items today are land disposition matters and we will schedule another meeting for December 7, 2018. Chair Case said that Item D-17 will be heard after lunch. Item D-14 is being withdrawn from today's agenda and will not be heard.

MEMBERS

Suzanne Case  
Tommy Oi  
Stan Roehrig  
Keone Downing

Jimmy Gomes  
Chris Yuen  
Sam Gon

STAFF

Russell Tsuji-Land  
Ian Hirokawa-Land  
David Nielson-DAR  
Ed Underwood-DOBOR

Kevin Moore-Land  
Richard Howard-Land  
Cathy Gewecke-DAR  
Barry Cheung-Land

OTHERS

Amanda Weston/AG  
David Day/AG  
Dre Kalili/DOT-Harbors  
Rick Volner/D7  
Robert Osgood/D7  
Scott Enright/D7  
David Bobich/D7  
Warren Watanabe/D7

Ross Smith/DOT-AIR  
Meredith Ching/D7  
Darren Strand/D7  
Alan Arakawa/D7  
Randy Cabral/D7  
Lucienne deNaie/D7  
Marti Townsend/D7

Wayne Tanaka/D7  
James Manaku/D7  
Gary Johnson/D12  
Donne Dawson/M9, M12  
Doug Volner/F1  
Tyler Ralston/D17, 18,19  
David Robichaux/D7  
Dave Reding/D18  
Kathy Goodell/D18  
Dave Raney/D18

Alan Murakami/D7  
Jennifer Suita/D10  
Kevin Ito/D8  
Hakim Ouansafi/D10  
Carl Smigielski/M12  
Charles Liniski/D18  
James Nicolai/D18  
Carl McKolski/D18  
Linda Wong/D18

**ITEM D-7** Holdover of Revocable Permits S-7263 (Tax Map Key: (2) 1-1-001:044), S-7264 (Tax Map Keys: (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key: (2) 1-1-002: por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys: (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

*Member Gomes recused himself, his employer is working with A & B. Member Oi disclosed that he has done some consultant work for a company that does work for A&B on Kauai.*

Ian Hirokawa, Land Division. This will be the last year for the hold-over permits, Act 126. He provided an update since the last approval. An amended (IIFS) Interim In-Stream Flow Standards have been approved by the Commission of Water Resource Management which will establish the stream flows and require the removal of several diversions as part of the system. We have tailored this year's hold-over to match the conditions in the IIFS as best as we can. Applicant is in the process of their EIS.

Applicant: Meredith Ching, representing A&B on water matters. Rick Volner, previous manager, and Darren Strand. Ching provided an update of their progress and noted that the approval of the RP will allow for continued water flow to their diversified Ag efforts, providing water to the County of Maui for their upcountry residences, farmers and business and our continued progress to transitioning from sugar to diversified agriculture. Their vision was to establish successful farm operations and keep the lands in open green space that would provide jobs, economic activity, further Hawaii's food and energy self-sufficiency and providing opportunities for new agriculture practices that will enable improved stewardship of the land and water resources on Maui.

Darren Strand gave an update on the process they have made regarding, cattle and the ranches have developed an innovative water system, expanding the pastures, inquiries from small operators for farming, and the County has asked to purchase 300 acres. They are doing crop rotation and using a drip-irrigation system for efficiency. There is a strong interest from a California company to acquire the all the lands for farming. They provided a map showing the different areas and what would be the best uses as well as those areas that are in use already.

We have collected and shared a lot of data regarding soils, climate and the conditions growing different types of crops.

Ching emphasized that a partnership would greatly accelerate our vision to turn these lands into a patchwork of productive and viable sustainable diversified ag land.

#### Board Discussion

Oi asked if they have submitted their plan in the beginning to Maui Soil and Conservation? Volner replied the current plan is still covered by the current Soils and Conservation Plan that was updated with the close of sugar. Oi asked if they are constantly updating the plan? Volner said yes, as new lands are transitioned.

Yuen noted that last year the Board put a no-diversion condition on Honomanu Stream, how is that treated in the IFFS? Is that part of the petition? Ching said yes. The decision was to restore H-90 flow, which is habitat restoration flow, so there is 64% median flow that has to remain in the stream at all times. Yuen said if we adopt the condition that Staff presented that would change it to a no-flow to this H-90 condition? Ching said it would.

Case asked for an outline of the EIS. Ching noted that the work is continuing, and part of the technical study was put on hold while waiting for the IIFS decision was completed. The goal is to have a draft EIS for review by the second quarter of 2019.

#### Public Testimony

*Mayor Alan Arakawa, Maui County.* We have been working very hard with the CWRM on restoring stream flows. When looking at goals for Maui County there is a strong push not to develop housing in central Maui but keep it green and the lands in ag. To do so we need water, we are unable to take water from the upper reaches of Haleakala to support all the agriculture we need to do. The water coming through the EMI system is a lot less expensive than using treated water coming through the County system. The ag line was abandoned this past year so that could be converted into drinking water. The EMI system also provides water to residences. Bottom line is they need the water to sustain agriculture in this area. We need to balance the needs of the people as well as the environment.

Roehrig asked why the County has not applied for a water lease? Arakawa said they do not have the pipes (infrastructure) to transport the water. Roehrig asked why not condemn the pipes? Arakawa said, cost. We are asking for the State's position on the EMI ditch to add more pipes, but for us to just do it is too expensive at the same time try to manage all that, the County does not have the budget. If the State would to lease to the County that could be an alternative.

*Scott Enright, Chairperson DOA,* strongly encourages the Board to approve this permit will help keep this in agriculture.

*Robert Osgood,* long-term experienced in diversified ag and supports the holdover for another year to have the water available for agriculture, domestic use, and produce hydro-power.



Support sustainability. If we do not provide water, the central valley would turn into a dry wasteland. We need a long-term solution.

*Warren Watanabe*, Executive Director, Maui Farm Bureau. In support of the hold-over lease. He provided written testimony.

*Randy Cabral*, President of Hawaii Farm Bureau. Strongly supports the hold-lease. It will provide water to those farm in agriculture. This decision is crucial for the farmers. He provided written testimony.

*David Robichaux*, Hawaii Agriculture Research Center, provided a statement from Stephanie Whalen. Transition takes a long time, wanted to relate how long it takes to get lands back into production again. Encourage everyone to be patient and supports the hold-over.

*Luciene deNaie*, Vice Chair Sierra Club Maui Chapter on behalf of the Sierra Club. Noted that they sent in written testimony this morning. She felt that everyone supports farming in central Maui and sharing of water on a reasonable basis. Felt the Board's job was to have accountability as you appropriate public resources. We find accountability missing in this process. To be brief A&B did not say how much water they are using for their farming projects. They mention there is a partner that might come in. There is a rumor the property is up for sale not a partnership. It needs to be determined if this permit transferable?

Everyone hopes it is someone who can farm the lands. It is the Board's job to make sure there is accountability in the process. The Board was wise to adjust the fee structure, obviously more information is needed. They do not know how these conditions are being met, it's like a scout's honor thing. There needs to be a written report. We in the community and Sierra Club supporters feel that the public should be involved in that process, there should be a hearing that Maui people can participate remotely to hear how the conditions are being met.

Presented pictures of debris that has not been removed. It would be nice to have A&B reach out to the community ask for help to clean up some of the debris. That has not happened. When she stopped by the EMI office, she asked how the permit was going Mr. Watts did not inform me there was a new thread going on regarding 11 streams, which she lives on one. There is no communication process here. Need to strengthen condition 6 and require regular communication among the affected communities and the decisions that are being made by the State and EM.

Commented that 200-years ago, Central Maui was a dryland forest with native species. There should be native restoration along some of the gulches. But need a plan with accountability, they have suggested similar conditions for the Board to implement. There is concern in Honopou that if more water is released that there are no drainage basins are not installed and it could wipe out historic bridges if a lot of logs come down. Community consultation is needed for these people who live in the leased area.



They respectfully ask that these stronger conditions be put into place in any approval Puolua stream the fish would have swim across the road, felt someone should be out checking these things and giving the Board information so you know how your conditions are doing. The public could aid in that.

If their conditions and concerns cannot be incorporated Sierra Club would like to respectfully request a contested case formally today. Passed out pictures of a stream that was supposed to be fully restored that was taken on a hike in July.

Case asked for clarification, that she is asking for a contested case on this Revocable Permit now? deNaie responded, yes, if the conditions we are suggesting and the due diligence that we are suggesting are not part of the approval we would like to request a contested case.

Case said we this has not been decided yet, if you are making a conditional request, Case is not going to consider it a request yet. She will leave it to their Director when she testifies.

Yuen said if we are going to deal with that we should have the Director come up and testify.

*Marty Townsend*, Director Sierra Club Hawaii, and reiterated the testimony the volunteer provided or the full restoration of the streams and the conditions that have not been fulfilled on. We have participated in this process for many years including the legislation on how this decision is based and they are concerned that the communities' needs are not being met and there are opportunities for this Board and this Department to fulfill the community's needs. This permit provides the ground work should future opportunities for legislation in the future if it ever comes up.

Yuen asked if she has in writing the failure of the restoration of the streams? Townsend said it was in the written testimony they submitted today regarding the (7) streams that should have been restored. This is an opportunity for this Board to make sure there is compliance. The Sierra Club feels there is enough water for everyone.

Case asked what Townsend's understanding of the requirements from the Water Commission side of carrying out the interim instream flow standards decision versus we are doing an allocation of water. deNaie said it is the Board job to make sure when you give leases that the resources are well protected and given reasonable and beneficial use. The Water Commission sets the amount in each stream and monitor that and so forth. Right now, there is no meaningful accountability, no timetable, finally a permit is going to be issued. Because one is not going to be needed for 15 streams.

Case noted the Water Commission report was just out in June. deNaie said the abandonment was not dependent on that the streams were going to be restored not matter what the Water Commission decided. The community has not been consulted about when it will be done and more importantly how the work is going to be done.

Oi said when you talk about community are they farmers? Who is the community? deNaie responded that some are farmers and residents who lease the land, and there are landowners who live downstream. Oi said the farmers are in support of this permit. He is a little confused, a lot of times when you go to hearings and you talk about community, it is not necessary everybody.

Townsend agreed, we are talking about the residents of east Maui who live along the streams, some who are taro farmers, cultural practitioners who gather in the streams.

Oi said what he is trying to get at is you are not here to stop the water. Townsend said that is correct. We want accountability, there's enough water for everyone. Oi asked if they had concerns of their own?

Townsend said A&B promised to restore the streams and we want to make sure that promise is fulfilled, our interest is to make sure the eco-system is functional, so all the native streams are restored to their original vibrancy and with that will come the traditional farm community in east Maui.

Oi said in the old days, they had to learn traditional Hawaiian history and culture and if he remembers correctly, everyone using the water, suppose help maintain the source. Is the community willing to pitch in and work with EMI to help maintain the stream flows? deNaie replied yes, but there has been no discussion, no outreach. There are two others that have regular work days out in the water shed to maintain the auwai stream bed. A&B owns a lot of the property and they need to reach out to the community and you should ask them to have regular meetings to talk about these malama activities.

Yuen, A&B in their written submittal regarding connectivity regarding Puolua Stream, the 8" pipe was extended to reach the small pool below the ditch for connectivity, is there something inadequate about that? deNaie said for many years there were (2) 4" rusted pipes that were removed and are part of the debris that is still there. The local farmers in there asked to have an 8" pipe go all the way across before there was an 8" pipe coming out above the little pool. The pipe has to go under the road. The entire stream is diverted, it goes into the ditch. Where the 8" pipe comes out it forms an informal dam that gets washed out every time it rains Mr. Siu has go up and restore the little dam otherwise the water does not make it to the pipe, our community view is that there is not connectivity for the fish to migrate.

Hanehoi is a short stream with diversions at 4 elevations, you need to remove the 3 upper divisions.,

*Alan Murakami*, Native Hawaiian Legal Corporation. Represents East Maui Na Moku. Noted the IFFS covers only 27 streams when there are over 100 streams and tributaries covered by (4) of the licensed areas. There is much uncertainty about how much and where the water is going and

how it is being used. We have asked that this decision be deferred until the EIS is completed. The mention today of another entity coming in creates uncertainty of what the water uses are going to be and again the lack of communication with the community.

He wanted to make it clear that Na Moku are not opposed to the diversified ag or the County's use to supply water to the existing communities it serves. They are opposed to reliance on surface water for expanded domestic uses for upcountry and elsewhere. He mentioned that the community is engaged in stewardship of taking care of the streams.

Murakami continued that they agree along with Sierra Club that there needs to be more communication and cooperation with the communities about the changes that are occurring. The conditions regarding clean-up need to be enforced. Na Moku would like access to these areas, so they can provide information if the conditions are met. They would like request no more than 25/mg based on what has been observed certain amount being used.

Case said she was trying to distinguish between the Water Commission process and the establishment of the interim in-flow standards, which went through a careful analysis stream by stream of in-stream values and the balancing of off stream uses and came up with established in-stream flow standards and off stream uses. Murakami said that only takes care of one-fourth of the water in east Maui. It is the duty of this Board to protect the 75% not covered by the IIFS.

Yuen commented the streams in the licensed areas, are covered either by the IIFS or taro flow restoration. The west end of the Huelo license is not covered by the IIFS and the taro streams overlap. The tributaries flow into lower streams and there seems to be a difference in how people are counting.

Yuen was not sure about limiting the number of gallons. He noted that we have the IIFS decision which has to be implemented, to that extent, the IIFS decision sets a baseline of biological integrity. Then we have the taro streams leaving implementation issues aside, requires restoration of flows, then we have a no-waste condition and they have to leave some water in the ditch, so it does not dry up.

He commented that if they limit the RP to just what they are using then basically we are limiting them to whatever lack of success in expanding farming operations that they have had over the last couple of years. If someone comes in and wants to farm and needs a certain number of gallons and it is available after leaving water in the stream for the IIFS, the taro farmers, if we adopted this 25/mg per day limit, that farmer would be stuck.

Murakami commented that they have the same concern, are we just saying there is a bank of water here and you get to use it when you come up with your diversified ag plan? That has been problematic for years, you are basically allowing the diverter to determine what would be reasonable and beneficial in this year period.



Yuen noted they are dealing with just this year. When the Board looks at the long-term lease, we have to take a careful look at are we going to leave more water in the stream, the IIFS, the taro requirements, from the standpoint of the next year, it would be difficult for someone to come in, for A&B to say to them they have to go to the Board to get any more water.

Murakami said that for a company this big, to say they are going to replace this area with diversified ag farmers, why do they not know this? How much water they are going to need should be a planning points.

Case commented that a) it has been considered by the Water Commission; b) different crops need different amounts of water. The goal is to promote diversified agriculture as well. They are in a transition.

Case also noted that the Water Commission required points of contact in order to facilitate communication between communities that were part of the stream system and this submittal incorporates those conditions.

Murakami said it could be beefed up. Case replied that it is a topic for the longer-term solution and we should start now, so we know where it needs to be beefed up. Na Moku would welcome that if it could work along the lines you are suggesting.

Downing asked what the picture looks like at the end of December 2019? Murakami is pessimistic. His hope that going into the next Legislation that there is not another holdover.

*Wayne Tanaka*, OHA provided a written testimony and asked the Board to take their time and stands by his written testimony. One point they want to emphasize is A&B needs to provide more information on the water use. They have not addressed other resources. They have ample resources to add meters to measure how much water they are using and the uses. This could be a good opportunity for A&B for a water lease.

*James Manaku*. His concern is access as a cultural practitioner and has encountered problems in the past.

Yuen asked if there are streams in the licensed area that are diverted that are not covered by the IIFS or the Taro Restoration?

*Ayron Strauch*, Hydrologist, CWRM, replied yes, and noted that the original petition was for the 27 streams in the licensed area. They were the largest streams and most important ones where communities lived along them. Water Commission did their due diligence to protect the in-stream resources with the IIFS.

Yuen asked where are the streams not covered by the IIFS? Strauch replied that they are spread out through the licensed areas.

Gon asked if the estimated number of over 100 streams accurate? Strauch said it depends if they are calling them individual streams or hydrologic units or a tributary or spring. He noted there are about 450 registered stream diversions. The IIFS accounts for many of them.

Yuen said there was a question regarding inadequate restoration at Hanehoi and Puolua, is it a matter of things that are going to be done but have not happened yet or some other reason? Strauch replied he does not deal with the regulating but from what he understands, there is a process to formally abandon or modify some of the diversions. That process often includes Army Corps and getting DOH permits which takes a while.

*Dean Uyeno*, Program Manager for Stream Protection, CWRM, A&B had submitted an application for abandonment of the stream diversions that were impacted by the Commission's amended in-stream flow standards. We met with DOH and there were concerns there and the decision was to wait for the final IIFs to come out. A&B applied for 100 diversions to be abandon, in the review process we asked them to separate the diversions into categories (low, medium and hardest) to abandon.

In the case of Hanehoi and Puolua the streams flow directly into the ditch. It is not a matter of diversion intake or putting up a gate. They have to construct a culvert for the stream to cross over the ditch. A&B has received permits this year and are moving forward. Revised applications have been submitted and they have a few things that need to be addressed, they should be resubmitting revised applications next week. The review process will take 30-days, and we hope to start early next year.

Oi asked if the studies they did, and their due diligence qualify under the Public Trust Doctrine? Uyeno replied yes, the Commission's in-stream flow standards are to implement the Public Trust Doctrine. The review only focused on the (27) streams petitioned.

Downing directed his question to the applicant. He will the same question he did before of NLC, what does December 2019 look like? Ching replied, she agreed with NLC, they will not be able to get to a long-term lease by the end of this Revocable Permit. The EIS process has to be done first which is time consuming. Assuming there are no legal challenges, public comments, it looks like the process will extend into 2020. They will have to go back to the Legislature.

Downing commented that listening today I heard two communities asking for two different things. For him it is about HR 5-7, 4 & 5. He believes we need to involve all aspects of the community. Going forward it would be smart to put everyone's cards on the table and work together to find a solution and solve the problems. In the big picture it is for the good of Maui.

Roehrig made the motion to extend the RP. This is the last year of the 3-year RP process. We need to give the Legislature time on this issue. He has heard that there is "opala", where others do not have access and cannot see and said it needs to be cleaned up and if you need help you

have to speak-up, not hide it. We need some stability. He is very impressed by the people of Maui, they have a great opportunity in agriculture. He is disturbed that the applicant did not say how much water is being used. He feels a relationship between the stake holders would benefit all and suggested that they set their priorities and work through them. Very pleased that the Water Commission has started the process. Part of his motion is to have a committee to meet and have a conversation on the solutions.

Yuen second the motion with a slight modification. Sierra Club has asked for quarterly meetings. He suggested that A&B meet with the Taro Farmers to discuss the plans for stream restoration projects before implementation. The focus should explain the modifications and gather feedback on any impacts with NHL being the point of contact. He agreed that having a committee for the lease is an excellent idea.

Downing commented that this is not a short-term disposition even though it is an RP. We know it is going back to the Legislature. We start this process now, it is a function that could help the Legislators with making a decision. By forming the committee, it may help the community that is in distrust.

Roehrig commented that this is a serious matter and is okay with having a permanent committee built into the lease. You have potential new owners, we have to get together and have a discussion. Someone from OHA, NLC, A&B, the Farmers in the committee.

Oi, noted after listening to the different groups, that this is about the water flow. The farmers need water, the County needs water. Before you can move into a lease, you have to get together and communicate with each other. When you go through the EIS process it will be easier because you will not have opposition, everybody should be on the same page. When they ask for the long-term lease it should be with the same idea and with the same movement going forward in this area.

Gon added that someone representing the in-stream flow protection and the protection of the native stream eco-stream and biota. One of the concerns was that some of the modifications that have been put in place have to address the movement of those biotas have not been met, at least in the view of some people.

Case offered a different prospective on that It is the Water Commission's side of it and they have asked for long-term monitoring of the streams to see if what they have set-up is working. DAR is willing and set-up to do that, they are waiting on funding.

After further discussion, it was decided that the parties involved would meet monthly for the first quarter and quarterly thereafter. Yuen also clarified that the RP is not assignable.

***Amendment:***



*The Board established an interim committee to discuss water usage issues in the license area. The committee shall consist of five members, representing Alexander & Baldwin, Farm Bureau, OHA, Native Hawaiian Legal Corporation and the County of Maui. The interim committee shall meet once a month for the first quarter, then at least quarterly thereafter, more often as useful.*

**MOTION**

**Approved as amended (Roehrig, Yuen) unanimous.**

11:40 am: Break

11:55 am: Back in session

**ITEM D-10** Cancellation of Governor's Executive Order No. 1274; Issuance of Quitclaim Deed and Issuance of Management Right-of-Entry to Hawaii Public Housing Authority; Kalaepohaku and Kapālama, Honolulu, O'ahu, Tax Map Key: (1) 1-6-009:003.

Russell Tsuji, Land Division, presented the submittal. Representatives from HPHA are present to answer any questions.

**Board Discussion**

Oi asked what will happen to the current tenants? Quansafi said there are only offices there now. There will be no displacement.

**Public Testimony**

*Hakim Quansafi*, Executive Director, HPHA. The proposed project is to provide low-income housing for serving the elderly with a 20%-60% EMI.

**MOTION**

**Approved as submitted (Oi, Gomes) unanimous.**

**ITEM M-9** Issuance of a Revocable Permit for Filming a Feature Film, Legendary Features Productions US, LLC, Kalaeloa Airport, Tax Map Key: (1) 9-1-13: Portion of 32.

Ross Smith, DOT-Airports, presented the submittal. Representative is present to answer any questions.

**Board Discussion-None**

**Public Testimony**

*Donne Dawson*, Hawaii Film Office. Stated that Legendary Features Production US, LLC was a very good company to work with and will do right by us.

**MOTION**

**Approved as submitted (Gomes, Oi) unanimous.**

- ITEM M-15** Issuance of a Right-of-Entry to APEX/Legendary Features Productions US, LLC, for storage, staging for filming, and special event at Pier 10, Cruise Terminal, Honolulu Harbor, O'ahu, Tax Map Key: (1) 2-1-001:001 (portion).

Dre Kalili, DOT-Harbors, presented the submittal.

Board Discussion

Downing asked if \$100.00/day the standard rate? Kalili replied yes, for non-maritime use. There is no restroom, nothing fancy, it is difficult to use. Downing said he was just curious as there is 15,000 square feet.

Kalili explained that for the last 2-years they have been running a pilot program to see what kind of the non-maritime use we could get from the cruise terminals. We set low rates to see what the interest was, and we are evaluating it.

Downing asked what does it cost to secure the place for them for the day? Kalili responded that the companies provide their own security. Sometimes they are required to hire Harbor Police. The electricity for 24-hours going into the space is approximately  $\frac{3}{4}$  of the rate being charged. They are trying to cover cost and test interest in the space.

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes, Oi) unanimous.**

- ITEM D-8** Issuance of Right-of-Entry Permit to Department of Transportation, Highways Division, for Data Collection and Geotechnical Studies for Honolua Bridge Rehabilitation Project, Honolua, Lāhainā, Maui, Tax Map Key: (2) 4-1-001:010.

Ian Hirokawa, Land Division, presented the submittal. DOH and their Consultant are present to answer any questions.

Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes, Roehrig) unanimous.**

- ITEM D-11** Grant of Two (2) Perpetual, Non-Exclusive Easements to Hawaiian Electric Company, Inc. for Utility Purposes; Issuance of a Right-of-Entry Permit, Nu'uuanu,

Honolulu, O'ahu, Tax Map Keys: (1) 1-9-001:001 (Por.), 005 (Por.), 018 and (1) 2-2-054:001 (Por.).

Russell Tsuji, Land Division, presented the submittal and did not have anything to add.

Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes, Oi) unanimous.**

***Return to Public Testimony Item D-7***

*Lucienne deNaie*, Vice Chair of behalf of Sierra Club Hawaii Chapter verbally requested a contested case for Item D-7 after the Board's approval. They felt that the Board did not exercise its option to require more accountability for public trust resources as is its purvey and mandate. They agree with many of the things that OHA and NHL that there are mechanisms that could be put in place where you would have accurate information to base your decision on.

They agree with member Downing that this not going to be the last time we will see this Revocable Permit, you will see one next year and the year after that, so we might as well get it right. We appreciate that a working group has been formed, but the people she represents have been left out of this working group. Our community of Haiku, are not represented by any group and they need to be included. We need public dialogue for the people in the water shed area and it needs to be someplace on Maui where they can come.

Their request is for the Permittee to convene regular meeting with the affected communities.

Case asked what was the basis for the contested case?

deNaie, replied the basis of the request for contested case is that this Board is required to not require accountability later on in the process.

Case asked what the was the group's legal basis? deNaie said that our basis is that you should have made your decision based on more accurate information that was provided to you. We hope to provide you with that information.

Case made a motion to go into Executive Session, Roehrig second the motion, unanimous.

12:20 pm: Executive Session

12:55 pm Back in Session



Upon returning from executive session, Case acknowledged that a request for a contested case has been made and that any request for a contested case must be followed up in writing within 10-days.

Izu, Representative for A&B, asked for clarification regarding the RP as it expires at the end of this year, if they put their request in within 10-days, will there be a determination before the end of the year to have a contested case or not? Yuen advised Izu to consult with the Attorney General.

- ITEM M-1** Issuance of a Revocable Permit for Storage of Aircraft Parts and Vehicle Parking, Delta Air Lines, Inc., Daniel K. Inouye International Airport, Tax Map Keys: (1) 1-1-003: 001 (Portion) and (1) 1-1-003: 050 (Portion).
- ITEM M-2** Issuance of a Revocable Permit for Retail Concession Storage Container, Tiare Enterprises, Inc., Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
- ITEM M-3** Issuance of a Revocable Permit for Aircraft Parking, Little Blue LLC, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
- ITEM M-4** Issuance of a Revocable Permit for Aircraft Parking, James Donovan, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
- ITEM -M-5** Issuance of a Revocable Permit for Aircraft Parking, Keven Rinkenbach, Waimea-Kohala Airport, Tax Map Key: (3) 6-7-001: Portion of 08.
- ITEM M-6** Issuance of a Revocable Permit for Parking and Storage of Rental Car Vehicles, Ean Holdings, LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-070: 045.
- ITEM M-7** Issuance of a Revocable Permit for Construction Material Storage and Equipment, Watts Constructors, LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).
- ITEM M-8** Issuance of a Revocable Permit for Trailer Storage and Aircraft Parking, Florida Air Transport, Inc., Kalaeloa Airport, Tax Map Key: (1) 9-1-13: Portion of 32.
- ITEM M-10** Issuance of a Revocable Permit for Airline Operations-Terminal Area Offices, Ticket Counter and Passenger Check-in Kiosk, American Airlines, Inc., Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.
- ITEM M-11** Issuance of a Revocable Permit for Parking and Storage of Rental Car Vehicles, Island Cars LLC, Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.

- ITEM M-12** Issuance of Gratis Revocable Permit to Secure Bike Share Hawaii LLC for approximately 5,000 square feet of warehouse space for unloading, staging, parking and miscellaneous use at Honolulu Harbor, O'ahu, Tax Map Key: (1) 1-05-38:005 (portion), located adjacent to Pier 23.
- ITEM M-13** Consent to Mortgage for Lot FV-8, Harbor Lease No. H-05-24, situated at the Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Iwilei, Honolulu, O'ahu, Tax Map Key: (1) 1-5-042-01.
- ITEM M-14** Issuance of a Month-to-Month Permit for Ralph S. Inouye Co. Ltd., for storage of construction material, equipment, parking, and other related uses at 701 N. Nimitz Highway, Pier 23 Honolulu Harbor, O'ahu, Tax Map Key: (1) 1-5-38:004, 005 (portion).

Ross Smith, DOT- Airports, had nothing to add to and is available Items M-1 through M-8 and Items M-10 through M-16 to answer any questions.

Board Discussion

Case asked if the Board had any questions regarding M-1 through M-8

**ITEM M-11:** Oi asked how they are treating oil spills? Smith replied it is the responsibility of the Concessionaire. It is inspected periodically. He noted the upside was that the rental cars are relatively new. Oi asked what happens to the ones that have been in accidents? Smith conveyed that it is also the responsibility of the Concessionaire. Oi asked if it was written into the Revocable Permit? Smith said it is not specifically, it is in the General Terms as you must return the premises in the condition you received it.

Public Testimony-None

**MOTION**

**Approved ITEMS M-1 through M-8 and ITEMS M-10 through M-16 as submitted (Roehrig/Gomes) unanimous.**

- ITEM D-12** Grant of Term, Non-Exclusive Easement to Wendy Brandt Johnson and William Paul Johnson, Co-Trustees under unrecorded Wendy Brandt Johnson Declaration of Trust dated December 16, 1987, as amended and restated, and Gary K. Johnson, also known as Gary Kahalewai Johnson, as Trustee under that certain unrecorded Gary K. Johnson Trust dated May 12, 2005, for Seawall and Steps Purposes; Ka'alawai, Honolulu, O'ahu, Tax Map Key: (1) 3-1-040: Seaward of 001.

Russell Tsuji, Land Division, noted that this was located a few houses down from the Doris Duke Foundation. Did not have anything else to add.

**ITEM M-16** Consent to Lease of Lands under Governor's Executive Order No. 16 for Tax Map Key: (2) 4-6-1:009 and Executive Order No. 80, Tax Map Key: (2) 4-6-001:001 (portion), Island of Maui, to Lahaina Restoration Foundation.

Board Discussion

Gomes noted that he talked to a Representative from Lahaina Restoration foundation and feels that they will do a good job

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes, Gon) unanimous.**

**ITEM D-2** Grant of Perpetual, Non-Exclusive Easement to Jerry Albarado and Ellen Y. Albarado, Trustees of the Jerry and Ellen Albarado Revocable Living Trust dated November 28, 2017, for Access and Utility Purposes, Hanapepe, Waimea, Kaua'i, Tax Map Key: (4) 1-8-003: Portions of 002 & 004.

Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes/Oi) unanimous.**

**ITEM D-3** Amend Prior Board Action of March 24, 2017, Item D-3, *Consent to Assign Grant of Easement No. S-4646, Raymond W. Miller, Michael G. Estep, and Victoria A. Estep, now known as Victoria A. Butler, Assignors, to Zonia Venancia Martinez Morales, Trustee of the Lilikoi Revocable Living Trust dated November 2, 2015, and Rene Castella, Trustee of the Hanalei Bay Revocable Living Trust dated July 6, 2015, Assignees, Omao, Koloa, Kaua'i, Tax Map Key: (4) 2-7-004:012.*

*Amend Grant of Easement No. S-4646, to allow the easement to "Run with the Land" and to be assignable without the prior written consent from the Board of Land and Natural Resources.*

The purpose of the amendment is to correct the Tax Map Key number for Applicant's private property referenced in the Board action of March 24, 2017 from Tax Map Key: (4) 6-4-001:135 to Tax Map Key: (4) 2-7-004:048

Russell Tsuji, Land Division, had nothing else to add to the submittal.

Board Discussion-None



Public Testimony-None

**MOTION**

**Approved as submitted (Oi, Gon) unanimous.**

**ITEM D-5** Issuance of a 5-Year Direct Lease to Hawaii Pacific Baptist Convention for Collegiate Ministry Center and Allied Purposes, Waiakea Cane Lots, Waiakea, South Hilo, Hawai'i, Tax Map Key: (3) 2-4-057:023.

Board Discussion

Downing noted that this has come to the Board before. Tsuji said their lease expired and they were on an RP until they go their 501C.

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes, Oi) unanimous.**

**ITEM D-6** Set Aside and Issuance of Immediate Management Right-of-Entry to Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Kawaihae Small Boat Harbor-South at Kawaihae 1<sup>st</sup> and 2<sup>nd</sup>, South Kohala, Hawai'i, Tax Map Keys: (3) 6-1-003:025 (portion), (3) 6-1-003:026 (portion) and seaward of same.

Board Discussion None

Public Testimony-None

**MOTION**

**Approved as submitted (Roehrig, Gomes) unanimous.**

**ITEM D-9** Grant of Perpetual, Non-Exclusive Easement to City and County of Honolulu for Drainage Purposes; Issuance of Management Right-of-Entry; Kapālama, Honolulu, O'ahu, Tax Map Keys: (1) 1-2-025: portions of 011 and 089, (1) 1-5-032 portions of 002 and 043.

Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Yuen, Oi) unanimous.**

- ITEM D-13** Set Aside to Department of Land and Natural Resources, Division of State Parks, for Addition to Diamond Head State Monument, Kapahulu, Honolulu, O'ahu, Tax Map Key: (1) 3-1-048:064.

Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Gon, Gomes) unanimous.**

- ITEM D-15** Annual Renewal of Revocable Permit 7570 to Hawaii Motorsports Association, Inc., Permittee; Kahuku, Koolauloa, O'ahu Tax Map Key: (1) 5-8-002:002.

Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Downing, Gomes) unanimous.**

- ITEM D-16** Set Aside to Department of Agriculture for Agricultural Purposes; Issuance of Immediate Management Right-of-Entry to Department of Agriculture, Honouliuli, Ewa, O'ahu, Tax Map Key: (1) 9-1-031:001.

Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Gon, Gomes) unanimous.**

- ITEM D-17** Denial of Petition for Contested-Case Hearing filed by David Kimo Frankel; September 14, 2018, with respect to Agenda Items D-13 and D-17, only with respect to Revocable Permit No. 7849 to Resorttrust Hawaii, LLC

*D-13: Issuance of Right-of-Entry Permits for Beach Activities to be held on October 16 and 17, 2018; and Issuance of Revocable Permit for Recreational and Maintenance Purposes; Resorttrust Hawaii, LLC, Applicant; Waialae, Honolulu, O'ahu, Tax Map Key: (1) 3-5-023:041; and*

*D-17: Annual Renewal of Revocable Permits on the Island of Oahu. See Exhibit 2 for list of Revocable Permits Staff supplemented and amended (i.e. denied request for contested case) **AMENDMENT:** Amend page 8 by adding the following Insert after the second paragraph:*

*The third Sandy Beach factor is "the governmental interest, including the burden that additional procedural safeguards would entail." In the submittal, the analysis notes the substantial burden on the DLNR for holding a contested-case hearing. But we also note that the legislature, in enacting HRS 171-55, gave the Board the power to issue revocable permits for temporary occupancy of state lands or interests therein on a month-to-month basis, for a period not to exceed one year, subject to continuation. The legislature intended to give the Board broad discretion in issuing revocable permits. Revocable permits serve many purposes beneficial to the State, and the Board can set terms to best serve the interests of the State.*

*The contested case hearing process takes many months, sometimes years, to complete. In essence, requiring a contested-case hearing could frustrate the entire purpose of issuing revocable permits. Further, to allow for a contested-case hearing for a continuation of a revocable permit will in many cases (as here) cause revocable permits to expire, which frustrates the Board's ability to maintain and utilize public lands.*

David Day, Deputy AG, the office received testimony from David Frankel as he is unable to attend and respond to the Staff Submittal. He noted that he may have Terry Revere represent him at the meeting.

Russell Tsuji, Land Division. Frankel mentioned that he may have Terry Revere to represent him and he was informed we would not start before 1:00 pm. The submittal was assisted by the Attorney General's Office. It is written to address if Mr. Frankel was entitled to a contested case. Through the analysis, Constitutional protective right, property interest our conclusion was we believed he did not have one. In our submittal we noted that he had sufficient time and opportunity to address this issue at the last meeting. Statue 171-55, Revocable Permit Statue specifically gives this Board authority to issue these permits, upon terms and conditions it feels is in the best interest of the State. It is limited to one-year and may be renewed annually. We feel that to put in a contested case, it could extend past the one-year period and this one ends at the end of December. Frankel submitted written testimony contrary to that.

#### Board Discussion

Downing, Constitution of SOH, Article 1 Section 2, how does that not allow him, he provided a case (1971 Save Our Surf) State vs Shigmatsu, that a Judge threw out. How does this say the person does not have standing for him does not make sense? David Day, Deputy AG, replied regarding Article 1, Section 2, Mr. Frankel laid out his legal basis in his written petition. His legal



basis was based on interest were Aesthetics, interest, Environmental interest, Public Trust, as a member of the Public Trust, under Article 11, Section 9, which is the right to a clean and healthful environment. Those were the provisions of the Constitution and the interests we considered in their analysis. The purpose of the petition is for him to lay out what he believes his interest are and the basis for that. That is what the analyses is based on.

Mr. Frankel's response focuses on a clean and healthful environment (Maui Electric case), healthful environment relates to pollution, conservation of resources. In the AG's analysis it boils down to access, the clutter that he sees, the other aspect of his claims was commercial activity, which does not relate to the environment at all, that is a policy issue. These are some of the things they considered.

#### Public Testimony

*Dave Raney*, consider Frankel's request. Supports the contested case and is in opposition of the submittal.

*Linda Wong*, opposes the denial and felt that a contested case would allow time to fix conditions in the RP area.

*Jennifer Lim*, Attorney representing Resorttrust Hawaii, LLC supports Staff submittal and deny the request for contested case hearing. Frankel has not been able to identify any Statutory right that would trigger his Constitutional due process right for a hearing. Chapter 171-55 does not indicate any consideration that we give anyone protective property interest in taking part in decision making that this Board has to undertake on whether or not to issue a Revocable Permit. The Board has complete discretion. She felt that most of Frankel's issues do not fall within the Board's jurisdiction. If there are concerns regarding Chapter 205A, the SMA, that is a County consideration.

*Tyler Ralston*, opposes the denial for contested case. He felt that the permittee has not complied with the terms of the Revocable Permit by pre-setting of cabanas, beach chairs, towel caddies in the permit area. He noted that they knowingly, with intention, violated County and State laws, rules, ordinance and regulations. In his written testimony commented, that the permittee intentionally, actively and flagrantly discriminated who could use certain parts of the State Parcel. Submitted written testimony.

#### MOTION

**Approved as submitted (Yuen, Gon). Gomes, Roehrig, Downing voted no.**

**Motion passes 4 to 3**

**ITEM D-18** Amend Prior Action of September 14, 2018, Item D-13 - *Issuance of Right-of-Entry Permits for Beach Activities to be held on October 16 and 17, 2018; and Issuance*

*of Revocable Permit for Recreational and Maintenance Purposes; Resorttrust Hawaii, LLC, Applicant; Waialae, Honolulu, O'ahu, Tax Map Key: (1) 3-5-023:041.*

The Amendment is Seeking Approval from the Board Regarding the Issuance of the Revocable Permit.

Russell Tsuji, Land Division, updated the Board of the actions that were taken to follow the permit requirements since the last meeting. Regarding the County's SMA concern, he indicated they received a call from the County stating compliance within the SMA.

#### Board Discussion

Downing is trying to understand the chronological history of what has occurred there. Tsuji responded with information as best as he could. There was a robust discussion on the changes that have taken place over the years. It was determined that there were certain practices by previous hotel owners that have occurred through the years. The current permittee has inherited some of those things and were under the impression that certain practices done in the past were okay. Due to the issues raised by the community they are trying to make it right per the Revocable Permit terms and conditions.

Downing said that they are making efforts to be compliant and still would still have certain items which they consider "recreational" for their guest's exclusive use in the RP area.

Oi, commented that at hotels on Kauai, they are allowed to bring chairs out to beach if they are requested by the guests, and removed every day and put it back on their private property. Downing noted that on State beaches, there is no pre-setting of chairs.

Jennifer Lim, Attorney for Resorttrust and Joe Ibarra. Addressed the City permitting and confirmed that there is no "Notice of Violation". There has been a troubled history on this property and Resorttrust would like to address those and be a good neighbor in the community. In the past decades the City has allowed certain uses without a SMA permit. The issue of the structures has come up recently to DPP when asked for comments on the Environment Assessment. They would like to get the Board's approval to create areas where they can place the cabana tents and lounge chairs in the RP area. We would like to have overflow seating at least twice a year at the Seaside Grill.

Lim noted that in 1968, the Board approved the hotel to "Enter and Occupy" approximately 6,250 square feet for recreational purposes. The hotel has been using a portion of this area since then. The Board over the years have increased the hotel's responsibility to maintain the area.

She provided a drawing showing property lines and where they would like to place cabanas and where they would like to have the overflow seating for the Seaside Grill during the busiest time of the year. Downing was concerned about the square footage they have noted on their plan for the cabanas or the clamshell loungers and felt it was reasonable to think that the public would

want traverse between them. The hotel's right to "Enter and Occupy" since 1968 is not much different from what they are requesting right now.

Roehrig commented that the rules have changed from 1968. Ibarra thanked the Board for helping to clarify what can and cannot be done. The appreciate being a part of the community.

#### Public Testimony

*Tyler Ralston*, the Staff submittal and what the current owners are saying it is apparent to him that there some confusion. The parcel has not been used like this for decades. He has been going to the area for decades. If you look at the terms and conditions of their RP, they are clearly being in violation. He would support the RP if they would comply with all the terms and conditions without the clutter.

*James Nicolai*, the concerns the public has are lateral access and the extent of furniture, no restaurant on the RP. There have been times when access has been restricted. The community would like to see a win-win situation.

*Dave Reding*, would like clarification of what if any commercial activities if any are allowed. What is missing in the RP is enforceable language. He also agreed that there should be an identifiable path way and proper signage. There should be some limit the encroachment place in the RP so as not to interfere with the public traversing the RP.

*Carl McKolski*, resident, frequents the hotel weekly. Supports the hotel.

*Kathy Goodell*, would like to see the EA completed and so that all issues are identified.

Case asked Lim to bring up the map with the items they are asking for. Would all the structures be in the shoreline set back? The City's concern were the pavers that the cabanas sat on were in the shoreline set-back. Yuen said the hotel could apply for a minor Shoreline setback permit. Although it is only for 14-days.

Gomes asked if they have engaged with the community? He felt it was important as that is where they live. Lim said they have attended Neighborhood Board meetings and at one point came to an agreement regarding the public access. When those plans fell through the community was not happy. Gomes encouraged the hotel to take the community's feelings into consideration so there was a win-win situation.

Lim clarified to the Board that they would like permission to place the clamshell or cabanas for hotel use in the RP area. Roehrig asked if the hotel wanted the Board to disagree with the County? Do you want us to approve what is contrary to what the County has said? Lim replied that they want the Board to approve their ability to have those uses. Lim continued, the County is a regulatory agency that will make the legal determination whether a particular building or other items needs some kind of regulatory permit.



Yuen said that it should be subject to City and County regulations.

**CONDITIONS:**

1. *The allowed uses within the permit area will be as shown on the map attached as Exhibit I-A to Jennifer's Lim's letter dated August 6, 2018.*
2. *The Permittee will obtain the necessary permits or approvals for the uses allowed under this new permit, before using the area as allowed by the Revocable Permit.*
3. *Public access shall be allowed in the permit area, to the extent the area is not in use as allowed by the Revocable Permit.*
4. *The rent shall be 3% over the 2018 rent for RP No. 7849 until condition 2 is satisfied, then the rent will increase to \$6,300 per month or 3% of gross proceeds from the allowed uses within the permit area, whichever is greater.*
5. *There shall be two (2) twenty- foot wide clear pathways for public access/walkway (mauka to makai) on the Koko Head side of the permitted grassy area. The Permittee is authorized to patrol and enforce the clear pathway area for public access/walkway.*
6. *Board member Downing is authorized to assist the Permittee in identifying the most suitable areas for the two (2) twenty feet wide clear pathways.*
7. *No weddings, surf lessons or kayaking/boating activities are allowed within the permitted area.*

**MOTION**

**Approved the Issuance of a Revocable Permit in the form recommended by Staff, with conditions (Downing, Yuen)**

**ITEM D-19** Amend Prior Action of September 14, 2018, Item D-17 - *Annual Renewal of Revocable Permits on the Island of Oahu. See Exhibit 2 for list of Revocable Permits.*

The amendment is to authorize the renewal of Revocable Permit No. 7849.

**With the approval of D-18 as amended above, this matter was withdrawn.**

**ITEM F-1** Request for approval to enter into a Memorandum of Agreement Between the State of Hawaii, Board of Land and Natural Resources (or "BLNR") and the State of Hawaii, Department of Transportation (or "DOT"), which oversees its Harbors Division (or "HAR"), regarding the New Kapālama Container Terminal Wharf and Dredging, Honolulu Harbor, O'ahu, Hawaii (Job H.C. 10498) and the Proposed Minimization and Offset Measures Designed to Minimize or Offset the Total Losses to Natural Hard Substrate (Live Rock), Fouling Community (Marine

Invertebrates) on Natural Hard Substrate and Stony Coral, that will Occur as a Result of the Development. The Proposed Minimization and Offset Measures Will Include the Funding of Coral Transplantation Efforts and Restoration Projects, Consisting of Urchin Production and Out-planting to Generate Natural Hard Substrate and Native Fouling Community with Associated Monitoring to Document Results, and Coral Colony Production and Out-planting at Nexus Sites to Generate the Replacement for the Loss of Corals, with Associated Monitoring to Document Results.”

Brian Nielson and Cathy Gewecke, Division of Aquatic Resources. Provided a handout and an overview.

Board Discussion

Oi asked if they are going to be dredging the area? There is marine life there. Nielson replied yes. Coral will be transplanted where they can. The coral nursery and sea urchin hatchery will mitigate for the loss.

Nielson invited the Board to tour the Nursery and Hatchery.

Public Testimony-None

**MOTION**

**Approved as submitted (Gon, Yuen) unanimous.**

**ITEM J-1** Continuation of Revocable Permit No. 39 to HBM, LLC, located at the Ala Wai Small Boat Harbor, Kālia, Honolulu, Island of O’ahu, Hawai’i, Tax Map Key: (1) 2-3-037:020. Declare that the continuation of the Revocable Permit will probably have minimal or no significant effect on the environment and accept the Finding of No Significant Impact.

Ed Underwood, Division of Boating and Recreation, presented the submittal.

Board Discussion

Downing asked if anyone goes down to check the boats? Yes, DOCARE did a sweep of “live-a-boards” and are planning another one soon.

Public Testimony-None

**MOTION**

**Approved as submitted (Downing, Oi) unanimous.**

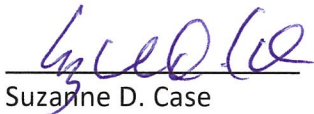
There being no further business, Chairperson Suzanne Case adjourned the meeting at 4:49 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira  
Land Secretary

Approved for submittal:



Suzanne D. Case  
Chairperson  
Department of Land & Natural Resources